

March 25, 2025

Hon. Ona T. Wang
United States Magistrate Judge
Southern District of New York

Re: *The New York Times Company v. Microsoft Corporation, et al.*, 1:23-cv-11195; *Daily News, LP, et al. v. Microsoft Corporation, et al.*, 1:24-cv-3285

Dear Magistrate Judge Wang:

I write on behalf of Plaintiffs Daily News, LP, *et al.* (the “Daily News Plaintiffs”) and The New York Times Company (“The Times”) (collectively, the “News Plaintiffs”). In order for News Plaintiffs to make progress on discovery into OpenAI’s output log data in advance of the April 10 hearing, we ask that you order OpenAI to identify no later than March 31 the nature and extent of output log data that it has destroyed since at least December 27, 2023, when The Times filed its original Complaint.

This dispute relates to News Plaintiffs’ prior motion to compel at *Times* Dkt. [379](#) (the “Motion”), which arose after OpenAI sent a letter to News Plaintiffs on November 15, 2024, stating that OpenAI was not preserving all relevant output log data that News Plaintiffs had long been requesting. As part of that Motion, News Plaintiffs requested the Court to order OpenAI to: (1) preserve its output log data, including output log data that contains News Plaintiffs’ content, hereinafter, and (2) identify all output log data that has been destroyed, when it was destroyed, and whether it is retrievable. Dkt. 379 at 3. The Court heard argument on the Motion at the January 22, 2025, hearing, and advised the parties to continue to meet and confer to see “if there is a way to find out what was deleted or not preserved in the past,” and then “also, going forward, if there is a way to manage what seems to be fairly clear-cut and specific concerns that may [] only be a small subset of the users and the logs [they] want to be deleted.” Jan. 22, 2025, Hearing Tr. at 49:18-23; Dkt. 441 at 2 (ordering the parties to “meet and confer regarding the privacy and technological considerations implicated in Plaintiffs’ request and file a joint status letter on the docket by February 13, 2025, regarding the status of this issue”).

The parties met and conferred by video conference on February 7, 2025, and pursuant to the Court’s January 24, 2025, Order (Dkt. [441](#)), filed a joint status update to the Court. In that status update, News Plaintiffs wrote: “OpenAI has refused to give The Times and Daily News Plaintiffs a clear answer as to what amount of output log data OpenAI deleted for each product at issue, and OpenAI will still not agree to preserve relevant output log data.” Dkt. [462](#) at 3. The parties met and conferred again by video conference on March 5, 2025, and OpenAI still did not provide News Plaintiffs with a clear answer as to what amount of output log data OpenAI has deleted for each product at issue, and confirmed that it has not been able to identify a technological way to identify and preserve only potentially relevant output log data. News Plaintiffs sent a final email to counsel for OpenAI on March 18, 2025, asking OpenAI to:

[P]lease provide in writing no later than March 21: (1) an identification of all output log data that has been destroyed, including an estimated volume thereof based on the best information available to OpenAI, (2) when such data was destroyed, and (3) whether such data is retrievable. If OpenAI is refusing or

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unable to furnish this information, please set forth the basis of such refusal in writing no later than March 21.

Exhibit A (J. Maisel email dated March 18, 2025). OpenAI has not responded to News Plaintiffs' March 18 request.

Having no clear answers after months of meet and confers on the output log preservation issue, News Plaintiffs need a date certain for OpenAI to identify what output log data it deleted so that News Plaintiffs may evaluate to what extent OpenAI may have destroyed relevant information helpful to News Plaintiffs' claims and so the parties can move forward with discovery on the output log data that OpenAI has preserved. In order to make progress on this issue in advance of the forthcoming April 10 discovery conference, News Plaintiffs ask this Court to order OpenAI to provide in writing no later than March 31, 2025: (1) an identification of all output log data that has been destroyed, including an estimated volume thereof based on the best information available to OpenAI, since December 27, 2023, when The Times filed its original Complaint, (2) when such data was destroyed, and (3) whether such data is retrievable.

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Respectfully submitted,

/s/ Steven Lieberman

Steven Lieberman

Rothwell, Figg, Ernst & Manbeck, P.C.

/s/ Ian Crosby

Ian B. Crosby

Susman Godfrey L.L.P.

cc: All Counsel of Record (via ECF)